

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL  
MORTGAGE BACKED SECURITIES  
LITIGATION,  
This Document Relates to: ALL CASES

Master Case No. C09-037 MJP

[Consolidated with: Case Nos.  
CV09-0134 MJP, CV09-0137 MJP, and  
CV09-01557 MJP]

**STIPULATED SUPPLEMENTAL  
CONFIDENTIALITY ORDER  
RELATING TO LOAN FILE  
PRODUCTIONS**

Pursuant to Federal Rule of Civil Procedure 26 and Federal Rule of Evidence 502, and in the interest of efficiency and judicial economy, particularly in the interest of avoiding ancillary litigation over discovery issues relating to confidential or proprietary information or the production of privileged materials, the undersigned Plaintiffs and Defendants hereby stipulate and agree to this order and the procedures set forth herein for addressing the production of the privileged material described herein.

1. Non-waiver of Privileges. This Order is entered pursuant to Federal Rule of Evidence 502(d). In order to allow for expeditious production of loan file documents<sup>1</sup>

<sup>1</sup> These documents are distinct from those discussed during the December 19, 2011 telephonic hearing with the Court and not subject to the state privacy laws at issue at that hearing.

1 including voluminous servicing records sought in this matter which typically contain very  
2 little if any privileged material, a Producing Party may, at its sole option, produce such  
3 materials without detailed, or any, review to determine whether privilege or other privilege or  
4 immunity from discovery applies to some of the documents produced. In accordance with  
5 Federal Rule of Evidence 502(d) and other applicable Rules, disclosure in the course of  
6 discovery of any document or information shall not be deemed to waive—in this litigation or  
7 in any other Federal or State proceeding—any applicable privilege or immunity from  
8 discovery that would otherwise attach to the document or information produced or to other  
9 documents or information, including without limitation the attorney-client privilege, the  
10 work-product doctrine, the joint defense or common interest privilege, personal privacy  
11 protection, the bank examination privilege and the deliberative process privilege, regardless of  
12 the extent (if any) to which the Producing Party has reviewed the document or information for  
13 privilege or other protection. Likewise, where a Party has produced loan file documents in  
14 another action, investigation, or other proceeding without detailed, or any, review to  
15 determine whether privilege or other immunity from discovery applies, no Party shall claim  
16 that production of such documents in such other action, investigation, or other proceeding  
17 constitutes a waiver of any privilege or protection with respect to the documents produced.  
18

19       2.     Clawback of Protected or Erroneously Produced Documents. The following  
20 provision applies to all loan file documents produced in this action, and supersedes the  
21 Stipulated Protective Order and Stipulated Order Regarding Clawback of Inadvertently  
22 Produced Documents dated November 24, 2010 (Doc. 213) with regard to the production of  
23 loan file documents, to the extent this provision and that Order conflict. Pursuant to Fed. R.  
24 Evid. 502(d), if a Party (hereinafter, “Producing Party”) at any time notifies any other Party  
25 (hereinafter, “Receiving Party”) that the Producing Party, for any reason, disclosed loan file  
26 documents that are protected from disclosure under the attorney-client privilege, work product  
27 doctrine, and/or any other applicable privilege or immunity from disclosure, or the Receiving  
28

1 Party discovers such disclosure (in which case the Receiving Party shall give the Producing  
 2 Party prompt notice), the disclosure, pursuant to Rule 502(d), shall not be deemed a waiver –  
 3 in this litigation or in any other proceeding, including in Federal or State proceedings – of the  
 4 applicable privilege or protection.

5 The Receiving Party shall upon request immediately return to the Producing Party or  
 6 destroy all summaries or copies of such loan file documents, shall provide a certification of  
 7 counsel that all such disclosed materials have been returned or destroyed, and shall not use  
 8 such items for any purpose until further order of the Court. In all events, such return or  
 9 destruction and certification must occur within five business days of receipt of the request.  
 10 Within ten business days of the notification that the disclosed materials have been returned or  
 11 destroyed, the Producing Party shall produce a privilege log with respect to the disclosed  
 12 materials. The return of any Discovery Material to the Producing Party shall not in any way  
 13 preclude the Receiving Party from moving the Court for a ruling that the disclosed  
 14 information was never privileged; however, the Receiving Party cannot assert as a basis for  
 15 the relief it seeks the fact or circumstance that such privileged documents have already been  
 16 produced. Allegedly privileged documents shall remain protected against disclosure and use  
 17 during the pendency of any dispute over their status. Nothing in this Order shall affect any  
 18 Party's right to withhold from disclosure documents or information that are privileged or  
 19 otherwise protected from disclosure.  
 20

21 Dated: January \_\_, 2012

22 Respectfully submitted,

23 **HILLIS CLARK MARTIN & PETERSON**  
 24 **P.S.**

25 By: \_\_\_\_\_

26 Louis D. Peterson, WSBA #5776  
 27 Brian C. Free, WSBA #35788  
 28 Hillis Clark Martin & Peterson P.S.

1221 Second Avenue, Suite 500  
Seattle WA 98101-2925  
Tel: (206) 623-1745 Fax: (206) 623-7789  
Email: ldp@hcmp.com; bcf@hcmp.com

**BINGHAM MCCUTCHEN LLP**

Susan L. Hoffman (admitted *pro hac vice*)  
Bingham McCutchen LLP  
355 South Grand Avenue, Suite 4400  
Los Angeles, CA 90071-3106  
Tel: (213) 680-6400 Fax: (213) 680-6499  
Email: susan.hoffman@bingham.com

David M. Balabanian (admitted *pro hac vice*)  
John D. Pernick (admitted *pro hac vice*)  
Jee Young You (admitted *pro hac vice*)  
Frank Busch (admitted *pro hac vice*)  
Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
Tel: (415) 393-2000 Fax: (415) 393-2286  
Email: davidbalabanian@bingham.com;  
john.pernick@bingham.com;  
jeeyoung.you@bingham.com  
frank.busch@bingham.com

Theo J. Robins (admitted *pro hac vice*)  
Bingham McCutchen LLP  
399 Park Avenue,  
New York, NY 10022-4689  
Tel: (212) 705-7000 Fax: (212) 702-3680  
Email: theo.robins@bingham.com

*Attorneys for Defendants Washington Mutual  
Asset Acceptance Corporation, Washington  
Mutual Capital Corporation, David Beck,  
Richard Careaga, Rolland Jurgens, and Diane  
Novak*

**CRAVATH, SWAINE & MOORE LLP**

Evan R. Chesler (admitted *pro hac vice*)  
Thomas G. Rafferty (admitted *pro hac vice*)

1 Daniel Slifkin (admitted *pro hac vice*)  
2 Michael A. Paskin (admitted *pro hac vice*)  
3 Wes Earnhardt (admitted *pro hac vice*)  
4 Cravath, Swaine & Moore LLP  
5 Worldwide Plaza  
6 825 8th Avenue  
7 New York, NY 10019  
8 Tel: (212) 474-1000 Fax: (212) 474-3700  
9 Email: echesler@cravath.com;  
10 trafferty@cravath.com; dslifkin@cravath.com;  
11 mpaskin@cravath.com;  
12 wearnhardt@cravath.com

13 *Attorneys for Defendants Washington Mutual*  
14 *Asset Acceptance Corporation and Washington*  
15 *Mutual Capital Corporation*

16 **COHEN MILSTEIN SELLERS &**  
17 **TOLL PLLC**

18 Steven J. Toll  
19 Julie Goldsmith Reiser, WSBA #27485  
20 Joshua S. Devore (admitted *pro hac vice*)  
21 Matthew B. Kaplan (admitted *pro hac vice*)  
22 S. Douglas Bunch (admitted *pro hac vice*)  
23 1100 New York Avenue, N.W.  
24 Suite 500, West Tower  
25 Washington, D.C. 20005  
26 Telephone: (202) 408-4600  
27 Facsimile: (202) 408-4699  
28 Email: stoll@cohenmilstein.com  
jreiser@cohenmilstein.com  
jdevore@cohenmilstein.com  
mkaplan@cohenmilstein.com  
dbunch@cohenmilstein.com

Joel P. Laitman (admitted *pro hac vice*)  
Christopher Lometti (admitted *pro hac vice*)  
Daniel B. Rehns (admitted *pro hac vice*)  
88 Pine Street, 14th Floor  
New York, New York 10022  
Telephone: (212) 838-7797  
Facsimile: (212) 838-7745  
Email: jlaitman@cohenmilstein.com

clometti@cohenmilstain.com  
drehns@cohenmilstein.com

**SCOTT+SCOTT LLP**

Anne L. Box (admitted *pro hac vice*)  
Hal D. Cunningham (admitted *pro hac vice*)  
707 Broadway, Suite 1000  
San Diego, California 92101  
Telephone: (619) 233-4565  
Facsimile: (619) 233-0508  
Email: abox@scott-scott.com  
hcunningham@scott-scott.com

Joseph P. Guglielmo (admitted *pro hac vice*)  
500 Fifth Avenue, 40th Floor  
New York, New York 10110  
Telephone: (212) 223-6444  
Facsimile: (212) 223-6334  
Email: jguglielmo@scott-scott.com

*Lead Counsel for the Class*

**TOUSLEY BRAIN STEPHENS PLLC**

Kim D. Stephens, WSBA #11984  
Janissa A. Strabuk, WSBA #21827  
1700 Seventh Avenue, Suite 2200  
Seattle, Washington 98101  
Telephone: (206) 682-5600  
Facsimile: (206) 682-2992  
Email: kstephens@tousley.com  
jstrabuk@tousley.com

*Liaison Counsel for the Class*

**ORDER**

IT IS SO ORDERED.

Dated: January 24, 2012



Marsha J. Pechman  
United States District Judge